

RETURN DATE: DECEMBER 4, 2018	:	SUPERIOR COURT
ALEXANDER JAMES and GEORGETTE JAMES	:	J.D. OF FAIRFIELD
VS.	:	AT BRIDGEPORT
CT FERTILITY, P.C. and MELVIN H. THORTON II	:	OCTOBER 30, 2018

COMPLAINT

1. At all times material to this Complaint, the Plaintiffs, Georgette James and Alexander James, are individuals residing at 44 Cheyne Court Royal Hospital Rd, London, United Kingdom.

2. At all times relevant to this Complaint, the Defendant, CT Fertility, P.C. (hereinafter "CT Fertility"), was s Professional Corporation, with a principal place of business located at 100 Technology Drive, Suite 201, in the Town of Trumbull and in the State of Connecticut.

3. At all times relevant to this Complaint, CT Fertility is a business organized primarily for the purpose of helping individuals conceive through Invitro Fertilization, (hereinafter, "IVF") including but not limited to egg harvesting and withdrawal, fertilization of eggs through intracytoplasmic sperm injection, (hereinafter, "ICS"), freezing both unfertilized eggs and embryos and transferring embryos into the patient.

4. At all times relevant to this Complaint, the Defendant, Melvin H. Thorton II, M.D. was the acting Medical Director at CT Fertility and Senior Physician and on or about August 25, 2016 CT Fertility sent out an announcement to the plaintiffs indicating that Dr. Melvin H. Thorton II would be taking over as Senior Physician and acting medical director of the Egg Donor Program at CT Fertility.

5. At all times relevant to this Complaint the plaintiffs contracted with defendants for IVF treatments, as they were unable to conceive on their own, including but not limited to, egg donation and retrieval from anonymous egg donor Jillian, #8470, (Hereinafter, "donor 8470") fertilization of said eggs through ICSI with plaintiff, Alexander James' sperm, freezing of embryos and transfer of embryos to plaintiff, Georgette James.

6. On or about January 2015 the plaintiffs contracted with Defendants for their first IVF, treatment, confirming anonymous egg donor 8470 for the maternal DNA.

7. At all times relevant to this Complaint, the plaintiffs used donor 8470 for the maternal DNA and communicated to defendants their family planning desires and instructions,

which were clearly, unequivocally and repeatedly documented in Defendants' records, indicating donor 8470 had been used in the IVF of their first child, Edward James, born April 19, 2016 and that they would use the same donor, 8470 for their second child and/or any future egg retrieval cycles and subsequent IVF treatments performed by the defendants, to ensure their desire to have full-siblings.

8. At all relevant times to this Complaint CT Fertility held itself out as an expert in IVF and egg donation.

9. At all relevant times to this Complaint CT Fertility held Dr. Thorton out to be an expert in IVF, particularly donor egg programs.

10. On or about September 15, 2016 the defendants conducted its second egg retrieval cycle from donor 8470 pursuant to the contract between plaintiffs and defendants.

11. On or about September 15, 2016 the defendants performed ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James.

12. At all relevant times to this Complaint the Defendants represented to Plaintiffs that from the September 15, 2016 IVF procedure, they had eight frozen blastocysts for storage to transfer to plaintiff Georgette James, when ready.

13. On or about January 19, 2017 the defendants performed a transfer of an embryo to plaintiff Georgette James, which failed.

14. On or about May 24, 2017, the defendants performed another transfer of an embryo to plaintiff Georgette James, which failed again.

15. On or about December 15, 2017, the defendants transferred the last two remaining embryos to plaintiff, Georgette James (as some embryos had not survived the freezing).

16. On August 22, 2018 the plaintiffs gave birth to their second child, Arthur James.

17. On or about October 19, 2018 the plaintiffs retained AlphaBiolabs to conduct DNA profiling on their two babies.

18. At all relevant times to this Complaint AlphaBiolabs' test results indicate that the plaintiffs' two babies, Edward James dob April 19, 2016 and Aurthur James dob August 22, 2018 are not full siblings.

19. At all relevant times to this Complaint AlphaBiolabs' test results indicate that plaintiff, Alexander James, is not the biological father of Arthur James.

20. Attached hereto is the following Opinion Letter of Healthcare Provider: **Exhibit 1**, Letter of Board Certified Reproductive Endocrinologist.

FIRST COUNT Negligence (as to CT Fertility)

1-20 Paragraphs 1-20 of the Complaint are hereby made part of this the First Count as if fully set forth herein.

21. At all relevant times to this Complaint CT Fertility and its agents and/or employees undertook to treat, monitor and care for plaintiffs and their genetic material

22. CT Fertility failed to exercise reasonable care under all of the circumstances and was negligent in one or more of the following respects:

- a. Upon information and belief, the defendant CT Fertility and its agents and/or employees failed to properly harvest eggs from donor 8470.
- b. Upon information and belief, the defendant CT Fertility and its agents and/or employees failed to properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James.
- c. Upon information and belief, the defendant CT Fertility and its agents and/or employees failed to properly freeze the plaintiffs' genetic material (embryos).
- d. Upon information and belief, the defendant CT Fertility and its agents and/or employees failed to properly transfer the correct genetic material (embryo) to plaintiff Georgette James.

23 CT Fertility Defendant had a duty to plaintiffs to perform the procedures according to the industry standard;

24. CT Defendant had a duty to obtain informed consent regarding the procedures as understand and agreed upon by the parties.

25. CT Fertility had a duty to disclose to plaintiffs risks associated with the procedures.

26. CT Fertility had a duty to plaintiffs to perform the procedures as agreed upon and memorialized in the medical intake records and correspondence.

27. The defendant negligently failed to perform its duties.

28. As a direct and proximate result of defendant's negligence, the plaintiffs have a baby who has no DNA from plaintiff father.

29. As a direct and proximate result of defendant's negligence, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

30. As a further direct and proximate result of defendant's negligence, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

31. As a further direct and proximate result of defendant's negligence, the plaintiffs have suffered financial loss and severe emotional distress and will likely continue to suffer emotional distress and financial loss all to their detriment.

SECOND COUNT *Negligence (as to Dr. Thorton)*

1-20 Paragraphs 1-20 of the Complaint are hereby made part of this the Second Count as if fully set forth herein.

21. At all relevant times to this Dr. Thorton and his agents and/or employees undertook to treat, monitor and care for plaintiffs and their genetic material

22. Upon information and belief, the defendant, Dr. Thorton, in his capacity as medical director and senior physician at CT Fertility, failed to exercise reasonable care under all of the circumstances and was negligent in one or more of the following respects:

- a. Upon information and belief, the defendant Dr. Thorton and his agents and/or employees failed to properly harvest eggs from donor 8470.
- b. Upon information and belief, the defendant Dr. Thorton and his agents and/or employees failed to properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander.
- c. Upon information and belief, the defendant Dr. Thorton and his agents failed to properly freeze the plaintiffs' genetic material (embryos).
- d. Upon information and belief, the defendant Dr. Thorton and his agents failed to properly transfer the correct genetic material (embryo) to plaintiff Georgette James.

23. Defendant Dr. Thorton had a duty to plaintiffs to perform the procedures according to the industry standard;

24. Defendant Dr. Thorton had a duty to plaintiffs to obtain informed consent regarding the procedures as understood and agreed upon by the parties

25. Defendant Dr. Thorton had a duty to disclose to plaintiffs risks associated with the procedures.

26. Defendant Dr. Thorton had a duty to plaintiffs to perform the procedures as agreed upon and memorialized in the medical intake records and correspondence.

27. The defendant negligently failed to perform his duties.

28. As a direct and proximate result of defendant's negligence, the plaintiffs have a baby who has no DNA from plaintiff father.

29. As a direct and proximate result of defendant's negligence, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

30. As a further direct and proximate result of defendant's negligence, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

31. As a further direct and proximate result of defendant's negligence, the plaintiffs have suffered financial loss and severe emotional distress and will likely continue to suffer emotional distress and financial loss all to their detriment.

THIRD COUNT *Negligent Infliction of Emotional Distress* (as to CT Fertility)

1-31. Paragraphs 1 through 31 of the First Count are hereby made paragraphs 1 through 31 of this Third Count as if fully set forth herein.

32. The defendant inflicted emotional distress upon the plaintiffs.

33. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's negligence and as such, has inflicted emotional distress upon the plaintiffs in a manner indicative of its negligent disregard for plaintiffs' rights, and reasonable expectations or for the consequences of its actions.

34. The injuries and damages suffered by the plaintiffs are a direct and proximate result of the defendant and its infliction of emotional distress upon the plaintiffs.

FOURTH COUNT *Negligent Infliction of Emotional Distress (as to Dr. Thorton)*

1-31. Paragraphs 1 through 31 of the Second Count are hereby made paragraphs 1 through 31 of this Fourth Count as if fully set forth herein.

32. The defendant inflicted emotional distress upon the plaintiffs.

33. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's negligence and as such, has inflicted emotional distress upon the plaintiffs in a manner indicative of its negligent disregard for plaintiffs' rights, and reasonable expectations or for the consequences of its actions.

34. The injuries and damages suffered by the plaintiffs are a direct and proximate result of the defendant and its infliction of emotional distress upon the plaintiff

FIFTH COUNT *Intentional Infliction of Emotional Distress (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 26 of this Fifth Count as if fully set forth herein.

27. The defendant's relationship with the plaintiffs was that of a health care provider and patient and is regarded as a fiduciary relationship, in which mutual trust and confidence are essential such that the plaintiffs relied on CT Fertility, and trusted in its expertise and competency.

28. The defendant's conduct was extreme and outrageous and exceeds all possible bounds of decency.

29. The defendant intentionally did not disclose possible risks associated with the procedures performed by the defendants

30. As a result of the defendant's conduct and its relationship with the plaintiffs, the defendant inflicted emotional and physical distress on the plaintiffs and knew, or should have known, that its extreme and outrageous conduct would inflict severe emotional and physical distress on the plaintiffs due to the damage caused to their family, children, and the financial hardships they have suffered and will continue to suffer.

31. As a result of the defendant's intentional withholding of information, the plaintiffs suffered severe emotional and physical distress due to the damage caused to their family, children and the financial hardships they have suffered and will continue to suffer.

32. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

33. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

34. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

35. The Plaintiffs have suffered severe mental and physical distress as a result of the defendant's intentional acts and disregard for plaintiffs' rights, and reasonable expectations or for the consequences of its actions.

SIXTH COUNT: *Intentional Infliction of Emotional Distress (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Sixth Count as if fully set forth herein.

27. The defendant's relationship with the plaintiffs was that of a physician-patient and is regarded as a fiduciary relationship, in which mutual trust and confidence are essential such that the plaintiffs relied on Dr. Thorton and trusted in his expertise and competency.

28. The defendant's conduct was extreme and outrageous and exceeds all possible bounds of decency.

29. The defendant intentionally did not disclose possible risks associated with the procedures performed by the defendants.

30. As a result of the defendant's conduct and his fiduciary relationship with the plaintiffs, the defendant inflicted emotional and physical distress on the plaintiffs and knew, or should have known, that his extreme and outrageous conduct would inflict severe emotional and physical distress on the plaintiffs due to the damage caused to their family, children, and the financial hardships they have suffered and will continue to suffer.

31. As a result of the defendant's intentional withholding of information, the plaintiffs suffered severe emotional and physical distress due to the damage caused to their family, children and the financial hardships they have suffered and will continue to suffer.

32. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

33. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

34. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

35. The Plaintiffs have suffered severe mental and physical distress as a result of the defendant's intentional acts and disregard for plaintiffs' rights, and reasonable expectations or for the consequences of his actions.

SEVENTH COUNT *Reckless and Wanton Misconduct (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 26 of this Seventh Count as if fully set forth herein.

27. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

28. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

29. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

30. The defendant's conduct is indicative of its reckless disregard for plaintiffs' rights and for their family, and reasonable expectations and for the consequences of its actions.

31. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's reckless business practices, which caused significant harm to the plaintiffs and will likely continue to cause harm and financial loss to the plaintiffs in the future.

EIGHTH COUNT *Reckless and Wanton Misconduct (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Eighth Count as if fully set forth herein.

27. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

28. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

29. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

30. The defendant's conduct is indicative of his reckless disregard for plaintiffs' rights and for their family, and reasonable expectations and for the consequences of his actions.

31. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's reckless business practices, which caused significant harm to the plaintiffs and will likely continue to cause harm and financial loss to the plaintiffs in the future.

NINTH COUNT *Reckless and Wanton Infliction of Emotional Distress (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 26 of this Ninth Count as if fully set forth herein.

27. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

28. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

29. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

30. The defendant's conduct is indicative of his reckless disregard for plaintiffs' rights and for their family, and reasonable expectations and for the consequences of his actions.

31. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's reckless business practices, which caused significant infliction of emotional distress upon the plaintiffs.

TENTH COUNT *Reckless and Wanton Infliction of Emotional Distress (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Tenth Count as if fully set forth herein.

27. As a direct and proximate result of defendant's conduct, the plaintiffs have a baby who has no DNA from plaintiff father.

28. As a direct and proximate result of defendant's conduct, the plaintiffs have two babies who are not full siblings as they had hoped, expected and relied upon in their plans for a family.

29. As a further direct and proximate result of defendant's conduct, the plaintiffs have reason to believe they have lost genetic material (embryos) belonging to them, with no knowledge as to whether it has been transferred to another person, destroyed or frozen under an incorrect name.

30. The defendant's conduct is indicative of his reckless disregard for plaintiffs' rights and for their family, and reasonable expectations and for the consequences of his actions.

31. The injuries and damages suffered by the plaintiffs are the direct and proximate result of the defendant's reckless business practices, which caused significant infliction of emotional distress upon the plaintiffs.

ELEVENTH COUNT *Breach of Contract (as to CT Fertility)*

1-24. Paragraphs 1 through 24 of the First Count are hereby made paragraphs through 26 of this Eleventh Count as if fully set forth herein.

25. On or about January 21, 2015 and continuously thereafter until the birth of plaintiff's second son, Arthur James, who was born on August 22, 2018 the plaintiffs had contracted with the defendant for IVF treatment, including but not limited to egg donation with donor 8470.

26. Defendant had a contractual duty to plaintiffs to perform the procedures as agreed upon and as memorialized in the medical intake records and correspondence.

27. Defendant materially breached its obligations.

28. Said conduct of the defendant constitutes an egregious breach and default of contract for which the plaintiffs have suffered and continues to suffer damages.

29. The defendant breached its obligations under the oral and written Agreements with plaintiffs and accordingly, the plaintiffs are entitled to be reimbursed by the defendant for all fees, costs and expenses reasonably incurred in the participation of IVF treatments with defendant in the approximate amount of \$200,000.00.

TWELFTH COUNT Breach of Contract (as to Dr. Thorton)

1-24. Paragraphs 1 through 24 of the Second Count are hereby made paragraphs through 26 of this Twelfth Count as if fully set forth herein.

25. On or about January 21, 2015 and continuously thereafter until the birth of plaintiff's second son, Arthur James, who was born on August 22, 2018, the plaintiffs had contracted with the defendant for IVF treatment, including but not limited to egg donation with donor 8470.

26. Defendant had a contractual duty to plaintiffs to perform the procedures as agreed upon and as memorialized in the medical intake records and correspondence.

27. Defendant materially breached its obligations.

28. Said conduct of the defendant constitutes an egregious breach and default of contract for which the plaintiffs have suffered and continues to suffer damages.

29. The defendant breached its obligations under the oral and written Agreements with plaintiffs and accordingly, the plaintiffs are entitled to be reimbursed by the defendant for all fees, costs and expenses reasonably incurred in the participation of IVF treatments with defendant in the approximate amount of \$200,000.00.

THIRTEENTH COUNT Breach Implied Covenant of Good Faith and Fair Dealing (as to CT Fertility)

1-29. Paragraphs 1 through 29 of the Eleventh Count are hereby made paragraphs 1 through 29 of this Thirteenth Count as if fully set forth herein.

30. Said conduct of the defendant constitutes a breach of the covenant of good faith and fair dealing, resulting in damages to the plaintiffs.

FOURTEENTH COUNT *Breach Implied Covenant of Good Faith and Fair Dealing (as to Dr. Thorton)*

1-29. Paragraphs 1 through 29 of the Twelfth Count are hereby made paragraphs 1 through 29 of this Fourteenth Count as if fully set forth herein.

30. Said conduct of the defendant constitutes a breach of the covenant of good faith and fair dealing, resulting in damages to the plaintiffs.

FIFTEENTH COUNT *Breach of Fiduciary Duty (as to CT Fertility)*

1-29. Paragraphs 1 through 29 of the Eleventh Count are hereby made paragraphs 1 through 29 of this Fifteenth Count as if fully set forth herein.

30. The defendant breached the fiduciary duties owed to the plaintiffs by:

- a. failing to properly harvest eggs from donor 8470.
- b. failing to properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James.
- c. failing to properly freeze the plaintiffs' genetic material (embryos).
- d. failing to properly transfer the correct genetic material (embryo) to plaintiff Georgette James.
- d. Failing to act in good faith and in a manner, that is in accordance with the standard of care provided in similar situations in this industry; and
- e. Failing to meet its duties and obligations under the contract.

31. As a direct and proximate result of the breach of the fiduciary duty by the defendant, the plaintiffs have incurred substantial losses and attorney's fees for which the defendant is liable.

SIXTEENTH COUNT *Breach of Fiduciary Duty (as to Dr. Thorton)*

1-29. Paragraphs 1 through 29 of the Twelfth Count are hereby made paragraphs 1 through 29 of this Sixteenth Count as if fully set forth herein.

30. The defendant breached the fiduciary duties owed to the plaintiffs by:

- a. failing to properly harvest eggs from donor 8470.

- b. failing to properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James.
- c. failing to properly freeze the plaintiffs' genetic material (embryos).
- d. failing to properly transfer the correct genetic material (embryo) to plaintiff Georgette James.
- d. Failing to act in good faith and in a manner, that is in accordance with the standard of care provided in similar situations in this industry; and
- e. Failing to meet its duties and obligations under the contract.

31. As a direct and proximate result of the breach of the fiduciary duty by the defendant, the plaintiffs have incurred substantial losses and attorney's fees for which the defendant is liable.

SEVENTEENTH COUNT *Connecticut Unfair Trade Practices Act (CUTPA) (as to CT Fertility)*

1-31. Paragraphs 1 through 31 of the Fifteenth Count are hereby made paragraphs 1 through 31 of this Seventeenth Count as if fully set forth herein.

32. The defendant is a person as defined in C.G.S §42-110a (3).

33. The defendant has violated C.G.S §42-110b of the Connecticut General Statutes by engaging in unfair or deceptive acts or practices by failing to provide the plaintiffs with the services and care for which they paid and to which defendant agreed to provide, despite reasonable demand by the plaintiffs.

34. As a result of the defendant's violation of CUTPA, plaintiffs suffered losses in the approximate amount of \$200,000.

35. As a result of the defendant's violation of CUTPA, plaintiff is entitled to punitive damages including attorney fees.

36. This Count is brought pursuant to §42-110(a) of the Connecticut General Statutes.

EIGHTEENTH COUNT *Connecticut Unfair Trade Practices Act (CUTPA) (Dr. Thorton)*

1-31. Paragraphs 1 through 31 of the Sixteenth Count are hereby made paragraphs 1 through 31 of this Eighteenth Count as if fully set forth herein.

32. The defendant is a person as defined in C.G.S §42-110a (3).

33. The defendant has violated C.G.S §42-110b of the Connecticut General Statutes by engaging in unfair or deceptive acts or practices by failing to provide the plaintiffs with the services and care for which they paid and to which defendant agreed to provide, despite reasonable demand by the plaintiffs.

34. As a result of the defendant's violation of CUTPA, plaintiffs suffered losses in the approximate amount of \$200,000.

35. As a result of the defendant's violation of CUTPA, plaintiff is entitled to punitive damages including attorney fees.

36. This Count is brought pursuant to §42-110(a) of the Connecticut General Statutes.

NINETEENTH COUNT *Misrepresentation (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 26 of this Nineteenth Count as if fully set forth herein.

27. The defendant made certain false representations to the plaintiffs, including but not limited to representations that they could and would properly harvest eggs from donor 8470, properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James, properly freeze the plaintiffs' genetic material (embryos) and properly transfer the correct genetic material (embryo) to plaintiff Georgette James.

28. As a result of these misrepresentations, the plaintiffs have two children who are not full siblings.

29. As a result of these misrepresentations, the plaintiffs have a son who does not have any of plaintiff father's DNA.

30. As a result of these misrepresentations, the plaintiffs do not know where their genetic material (embryos) are with egg donor 8470 and plaintiff father's sperm.

31. As a further result of the defendant's misrepresentations, the plaintiffs will incur significant expenses to undergo IVF to have another child with donor 8470 and plaintiff father's sperm, if the same donor is even willing and/or able to undergo the process again.

32. As a further result of the defendant's misrepresentations, the plaintiffs will incur significant expenses to obtain the genetic history for their child, Arthur James, and potential litigation involving this child.

33. As a result of the defendant's misrepresentations; the plaintiffs may never have children who are full siblings as they had hoped and reasonably expected.

34. As a result of the defendant's misrepresentations; the plaintiffs may never know what happened to their genetic material (embryos) as they reasonably expected.

TWENTIETH COUNT *Misrepresentation (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Twentieth Count as if fully set forth herein.

27. The defendant made certain false representations to the plaintiffs, including but not limited to representations that they could and would properly harvest eggs from donor 8470, properly perform ICSI (Intracytoplasmic sperm injection) - fertilization with eggs retrieved from donor 8470 and sperm retrieved from plaintiff Alexander James, properly freeze the plaintiffs' genetic material (embryos) and properly transfer the correct genetic material (embryo) to plaintiff Georgette James.

28. As a result of these misrepresentations, the plaintiffs have two children who are not full siblings.

29. As a result of these misrepresentations, the plaintiffs have a son who does not have any of plaintiff father's DNA.

30. As a result of these misrepresentations, the plaintiffs do not know where their genetic material (embryos) are with egg donor 8470 and plaintiff father's sperm.

31. As a further result of the defendant's misrepresentations, the plaintiffs will incur significant expenses to undergo IVF to have another child with donor 8470 and plaintiff father's sperm, if the same donor is even willing and/or able to undergo the process again.

32. As a further result of the defendant's misrepresentations, the plaintiffs will incur significant expenses to obtain the genetic history for their child, Arthur James, and potential litigation involving this child.

33. As a result of the defendant's misrepresentations; the plaintiffs may never have children who are full siblings as they had hoped and reasonably expected.

34. As a result of the defendant's misrepresentations; the plaintiffs may never know what happened to their genetic material (embryos) as they reasonably expected.

TWENTY FIRST COUNT *Breach of Duty to Disclose (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 22 of this Twenty First Count as if fully set forth herein.

27. As a result of the health care facility-patient relationship that was established between plaintiff and CT Fertility and its agents and employees, defendant had an affirmative duty to disclose to plaintiff prior to the procedures all risks associated with the procedures, including the risk that defendant could use the incorrect sperm during ICSI, switch genetic material, transfer the incorrect embryo, misplace, destroy or transfer plaintiffs' genetic material (Embryos) into the wrong person.

28. As a direct and proximate result of defendant's breach of duty the plaintiff has suffered significant harm including financial loss and emotional distress and will continue to suffer these losses for which the defendant is liable.

TWENTY SECOND COUNT *Breach of Duty to Disclose (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Twenty Second Count as if fully set forth herein.

27. As a result of the physician - patient relationship that was established between plaintiff and Dr. Thorton, defendant had an affirmative duty to disclose to plaintiff prior to the procedures all risks associated with the procedures, including the risk that defendant could use the incorrect sperm during ICSI, switch genetic material, transfer the incorrect embryo, misplace, destroy or transfer plaintiffs' genetic material (Embryos) into the wrong person.

28. As a direct and proximate result of defendant's breach of duty the plaintiff has suffered significant harm including financial loss and emotional distress and will continue to suffer these losses for which the defendant is liable.

TWENTY THIRD COUNT *Breach of Duty to Obtain Informed Consent (as to CT Fertility)*

1-26. Paragraphs 1 through 26 of the First Count are hereby made paragraphs 1 through 26 of this Twenty Third Count as if fully set forth herein.

27. Defendant had an affirmative duty to obtain informed consent from the plaintiffs regarding the procedures, risks and/or unfavorable potential outcomes that could occur, and in fact did occur.

28. As a direct and proximate result of defendant's breach of duty the plaintiffs have suffered significant harm including financial loss, emotional distress and attorney fees and will continue to suffer these losses for which the defendant is liable.

TWENTY FOURTH COUNT *Breach of Duty to Obtain Informed Consent (as to Dr. Thorton)*

1-26. Paragraphs 1 through 26 of the Second Count are hereby made paragraphs 1 through 26 of this Twenty Fourth Count as if fully set forth herein.

27. Defendant had an affirmative duty to obtain informed consent from the plaintiffs regarding the procedures, risks and/or unfavorable potential outcomes that could occur, and in fact did occur.

28. As a direct and proximate result of defendant's breach of duty the plaintiffs have suffered significant harm including financial loss, emotional distress and attorney fees and will continue to suffer these losses for which the defendant is liable.

WHEREFORE, the plaintiffs claim the following relief within the jurisdiction of the Superior Court.

1. Money damages within the jurisdiction of the Superior Court;
2. Punitive damages;
3. Reasonable fees and costs pursuant to C.G.S §42-110(g); and
4. Any and all such other relief as to equity may pertain.

Hereof fail not, but of this writ with your doings thereon, make due return according to law.

I hereby certify that I have knowledge of the financial responsibility of the plaintiffs and deem it sufficient to pay costs.

Dated at Middletown, Connecticut this 30TH day of October 2018

By:



STEPHANIE A. BERNSTEIN

The Balaban Law Firm

Their Attorney.

RETURN DATE: DECEMBER 4, 2018 : SUPERIOR COURT
ALEXANDER JAMES and GEORGETTE JAMES : J.D. OF FAIRFIELD
VS. : AT BRIDGEPORT
CT FERTILITY, P.C. and : OCTOBER 30, 2018
MELVIN H. THORTON II

STATEMENT OF AMOUNT IN DEMAND

The amount in demand, exclusive of interest and costs, is not less than Fifteen Thousand (\$15,000.00) Dollars.

RESPECTFULLY SUBMITTED,
FOR THE PLAINTIFFS



STEPHANIE A. BERNSTEIN
The Balaban Law Firm
Their Attorneys.

RET. DECEMBER 4, 2018

ALEXANDER JAMES and
GEORGETTE JAMES

VS.

CT FERTILITY, P.C. and MELVIN H.
THORTON

SUPERIOR COURT

J.D. OF FAIRFIELD

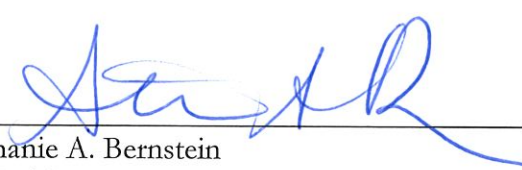
AT BRIDGEPORT

OCTOBER 30, 2018

CERTIFICATE OF GOOD FAITH

I, Stephanie A. Bernstein, hereby certify that I have made reasonable inquiry, as permitted by the circumstances, to determine whether there are grounds for a good faith belief that there has been negligence and a breach in the standard of care in the care and treatment of the plaintiffs, Alexander and Georgette James. The inquiry has given rise to a good faith belief on my part that grounds exist for an action against the defendants, CT Fertility, P.C. and its servants, agents, apparent agents and/or employees, the defendant and Melvin H. Thorton II, MD and his servants, agents, apparent agents, and/or employees. Pursuant to C.G.S. 52-190a(a), a copy of the written opinion obtained in support hereof is attached hereto.

RESPECTFULLY SUBMITTED
FOR THE PLAINTIFFS,
ALEXANDER JAMES and GEORGETTE JAMES

BY: 
Stephanie A. Bernstein
The Balaban Law Firm
Their Attorneys

PHYSICIAN'S OPINION PURSUANT TO CGS § 52-190(a)

Pursuant to the requirements enumerated in CGS § 52-190(a), I represent the following:

I am a Board Certified Reproductive Endocrinologist, in full-time practice and am licensed by the State of Connecticut or another state requiring the same or greater qualifications. I have been practicing in this specialty continuously for 21 years

I have reviewed the following relevant records, information and materials that were provided to me concerning Georgette and Alexander James and their anonymous chosen egg donor, "Jillian" Donor # 8470 and their two sons, Edward born on April 19, 2016 and Arthur born August 22, 2018:

1. Emails between Georgette and Alexander James and various employees of CT Fertility spanning From January 21, 2015 through to September 25, 2018
2. AlphaBiolabs DNA Profiling Test reports from 10/25/18 and 10/26/18
3. Birth Certificates for Edward and Arthur James

Georgette James DOB July 19, 1978 and Alexander James DOB October 13, 1975 contracted with CT Fertility in 2015 for IVF treatments as they were unable to become pregnant on their own. They worked with CT Fertility and the Donor Agency, chose an anonymous donor "Jillian" Donor # 8470. CT Fertility proceeded to extract eggs from Donor #8470, fertilize it through ICSI (Intracytoplasmic sperm injection) - with Alexander James' sperm for the transfer to Georgette James, for their first viable pregnancy. The James' first baby, Edward, was born on April 19, 2016. Alexander and Georgette went through the same process with CT Fertility and the same donor in 2016-2017. On September 15, 2016, CT Fertility retrieved eggs from Donor # 8470 and performed ICSI (Intracytoplasmic sperm injection - fertilization with sperm obtained from CT Fertility provided by Alexander James) They were told they had four viable embryos from the process. The first two embryos were transferred by CT Fertility to Georgette James but were not successful. On December 15, 2017, the last two embryos were transferred by CT Fertility and Dr. Thornton into Georgette James. On August 22, 2018 the James' second baby, Arthur, was born. The baby did not resemble Edward whatsoever and appeared to be a different race, which would not be possible, with medical probability if the correct sperm and donor egg were used.

Alexander and Georgette James retained AlphaBiolabs to conduct DNA profiling on the two children Edward and Arthur. The test results indicate that the babies are not full siblings and that Alexander James is not the biological father of Arthur James. Based on my review of the above information and documentation, I can conclude that, to a reasonable degree of medical probability, there are deviations from the applicable standards of practice pertaining to the care and treatment of Georgette and Alexander James, and the resultant embryos and pregnancies achieved through IVF treatments at CT Fertility and Dr. Thornton who was the Medical Director at the time. I can further conclude that the care and treatment provided by CT Fertility staff was negligent and not provided in a manner consistent with the standards of care that existed among fertility specialist medical doctors at the time of the alleged incident on September 15, 2016, the date of the egg retrieval from Donor # 8470 and ICSI (Intracytoplasmic sperm injection - fertilization with sperm obtained from CT Fertility retrieved from

Alexander James) and December 15, 2017, the date the last two embryos were transferred by CT Fertility and Dr. Thornton into Georgette James. Specifically, Dr. Thornton and CT Fertility failed to fertilize their chosen Donor's eggs with sperm provided by Alexander James and/or failed to transfer the correct embryos into Georgette James, which caused significant injury to Alexander and Georgette James and failed to accurately execute insemination of their chosen donor's eggs with sperm from Alexander James or to transfer the correct embryos linked to sperm from Alexander James the day of embryo transfer performed on September 15, 2017 and embryo transfer on December 15, 2017. As a result of Dr. Thornton's and CT Fertility's negligent treatment, Alexander and Georgette James along with their lost, destroyed or wrongly implanted embryos, sustained severe, and permanent injuries, some of which include not knowing where their embryos are, whether they were destroyed or implanted into someone else, who is now potentially raising their child/ren. Moreover, they now have a baby who is not genetically related to the father nor is he a full sibling to their first child. The defendant's deviation from the standard of care was the proximate cause of Alexander and Georgette James' injuries. Had the proper standard of care been rendered, Alexander and Georgette James would have the correct baby, with the intended father's DNA and egg donor #8470's DNA.

My opinions are based on my education, training and experience as a physician, and my examination of the medical records from CT Fertility, the genetic test results from AlphaBiolabs, the emails between Georgette and Alexander James and CT Fertility and various employees and the birth certificates for Arthur and Edward James.

I reserve the right to amend my opinions should further information become available to me.